

[Advisory Opinion 1992-9]  
ADVISORY OPINION 92-34[b]

The Ethics Commission has received your request for advice dated August 3, 1992, in which you relate the following facts: You are an employee in the Department of Information Systems and Telecommunications (DIST). Part of your responsibilities includes selecting computer hardware and software products for use in various County agencies. You have indicated a desire to purchase stock of corporations that may provide computer hardware and software products to the County; these corporations include IBM, Wang, Hewlett Packard, Lotus Development, Microsoft, EASEL, and Gupta. You indicate that a decision by Montgomery County to purchase products made by these vendors would not have any measurable impact on the price of their stock or the viability of the corporation. You have asked for authorization to invest in stock of these companies.<sup>1</sup>

Section 19A-11 provides that a public employee must not participate in a matter that affects a business in which the public employee has an economic interest.<sup>2</sup> Section 19A-11(c) limits the meaning of economic interest to:

- (1) Any source of income, direct or indirect, if the employee:
  - (A) Received more than \$1,000 from that source of income in any of the last 3 years;
  - (B) Is currently receiving more than \$1,000 per year from that source of income; or
  - (C) Is entitled to receive at least \$1,000 in any year in the future from that source of income;
- (2) A business in which the public employee owns more than 3%;
- (3) Securities that represent ownership or can be converted into ownership of more than 3% of a business; and
- (4) Any other economic interest worth more than \$1,000.

The Ethics Commission finds that Section 19A-11 does not prohibit you from purchasing stock in corporations that provide computer hardware and software to the County. Section 19A-11 does prohibit you, however, from participating as a public employee in any decision regarding purchase of material from a corporation after you have purchased stock in that corporation if the value of your economic interest in the corporation exceeds the thresholds established in Section 19A-11(c).

The Commission would also like to point out to you that Section 19A-15(a) prohibits a public employee from using confidential information for personal gain or the gain of another. Accordingly, if a public employee knew that Montgomery County was about to enter into a

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<sup>1</sup> For purposes of this advisory opinion, the Commission assumes that any purchase of stock by you would involve publicly traded stock, occur through a broker at market value, and would not involve a private sale.

<sup>2</sup> Unless otherwise indicated, section references are to the Montgomery County Code (1984).

substantial contract that might affect the value of a business, the public employee is prohibited from acquiring an economic interest in the business until the information about the pending contract became public.

Section 19A-8 authorizes the Commission to grant a waiver from the provisions of Section 19A-11 if the Commission finds each of the following:

- (1) The best interests of the County would be served by granting the waiver;
- (2) The importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) Granting the waiver will not give a public employee an unfair advantage over other members of the public.

Accordingly, if you purchase stock in a corporation that supplies computer hardware or software to the County, you could request a waiver from the Ethics Commission to authorize you to participate as a public employee in decisions relating to the purchase of goods from that business. The Commission must respond to such waiver requests on a case-by-case basis. With respect to each waiver request, the Commission would need to know at least the following information: the nature and value of the proposed procurement by the County; your role in the procurement; the quantity and value of your holdings in the company; your percentage of ownership in the company; and the gross income of the company.

The Ethics Commission trusts that you will find this opinion responsive to your inquiry. If you have further questions, please do not hesitate to contact the Ethics Commission.

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